

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES MELTON

v.

COMMONWEALTH OF  
PENNSYLVANIA ET AL.

**FILED**

FEB 23 2012

MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

CIVIL ACTION

NO. 09-3815

**ORDER**

AND NOW, this 23rd day of February, 2012, upon consideration of Petitioner

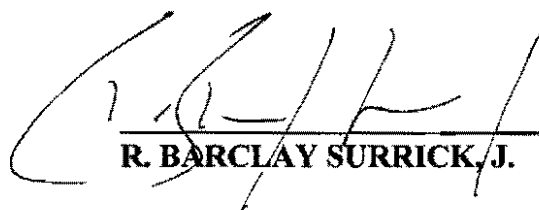
Charles Melton's Petition for Writ of Habeas Corpus (ECF No. 1), and after review of the Report and Recommendation of United States Magistrate Judge Thomas J. Rueter (ECF No. 13), it is

**ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**.<sup>1</sup>
3. The Petition for Writ of Habeas Corpus is **DISMISSED**.
4. No Certificate of Appealability shall issue.<sup>2</sup>

**IT IS SO ORDERED.**

**BY THE COURT:**

  
**R. BARCLAY SURRICK, J.**

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<sup>1</sup> Petitioner did not file objections to the Report and Recommendation. Petitioner did submit a Letter (ECF No. 15) asserting that he had not been informed about Pennsylvania's Accelerated Rehabilitative Disposition program prior to trial. Petitioner does not object to the Magistrate Judge's finding that he was not "in custody" when he filed the instant Petition. Since Petitioner was not in custody at the time that the Petition was filed, this Court lacks jurisdiction. *Obado v. New Jersey*, 328 F.3d 716, 717 (3d Cir. 2003).

<sup>2</sup> A certificate of appealability only issues if reasonable jurists could disagree with the Court's disposition of this matter. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). No reasonable jurist could disagree with our conclusion that we lack jurisdiction over Petitioner's claims.

*Lapsed to D. Stebbins*  
*Not by Certified Mail - C. Melton 2/23/12*